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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/803,834      | 03/17/2004  | Ben Meager           | 3772-7-CON          | 6460             |

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EXAMINER

LAVINDER, JACK W

ART UNIT PAPER NUMBER

3677

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                    |  |
|------------------------------|--------------------------------------|------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/803,834 | <b>Applicant(s)</b><br>MEAGER, BEN |  |
|                              | <b>Examiner</b><br>Jack W. Lavinder  | <b>Art Unit</b><br>3677            |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-45 is/are pending in the application.
- 4a) Of the above claim(s) 40-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 38 is objected to because of the following informalities: the "end portions" in line 3 should be "end portion". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 33 has been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure of the lifting wing on the upper seal member being on the middle portion and not on the start and end portions. The specification only discloses a lifting wing located on the start and middle portion and not on the end portion (page 9, lines 1-17).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3677

5. Claims 25 and 30 have been rejected under 35 U.S.C. 102(b) as being anticipated by Heckman, 3266112.

Regarding claim 25, Heckman discloses a device for creating a seal having

- an upper seal member (14) having a first mating surface (26) and a lifting wing (38)
- a lower seal member (12) having a second mating surface (20) and a closure bar groove (as seen in figure 2 at 68)
- a slider (50) having
  - a lifting rib (62)
  - a closure bar (60)
  - a body (54, figures 1-3)

Regarding claim 30, Heckman discloses first and second mating surfaces with identical profiles (figure 2).

6. Claims 25, 26, 28, 29, 31, 32 and 35 have been rejected under 35 U.S.C. 102(b) as being anticipated by Sander, 2810944.

Regarding claim 25, Sander discloses a device for creating a seal having

- an upper seal member (9) having a first mating surface (16) and a lifting wing (at 6 and 9, figures 2-5)
- a lower seal member (5) having a second mating surface (at 16) and a closure bar groove (22)
- a slider (S) having

Art Unit: 3677

- o a lifting rib (12, 13)
- o a closure bar (11)
- o a body (10, figures 1-6)

Regarding claim 26, Sander discloses a first and second lifting wing (6, 9) and a first (12) and second (13) lifting rib.

Regarding claim 28, Sander discloses a top lateral surface on both the top and bottom seal members at about the same elevation (figure 2).

Regarding claim 29, Sander discloses a seal member rib (20') that supports the interlocking first and second mating surfaces (figure 2).

Regarding claim 31, Sander discloses a partial cylindrical shaped slider that contacts at least one of the upper and lower seal members (figures 2-6).

Regarding claim 32, Sander discloses a lifting rib (13) that does not extend the entire length of the slider (figures 7 and 8).

Regarding claim 35, Sander discloses a seal on a container (col. 1, lines 25-26), which can be used as a shipping package.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3677

8. Claim 27 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Sander in view of Tilman, 4929487.

Sander fails to disclose a stiffener in the lower or upper seal member.

Tilman discloses that it is old and well known to add a stiffener (50) in order to stabilize the male profile of the seal.

It would have been obvious to a person having ordinary skill in the art to add the stiffener to Sander's male profile in order to stabilize the male profile/rib.

9. Claims 34, 36 and 37 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Sander in view of Madsen, 2613421.

Regarding claim 34, Sander fails to disclose a pull-tab with a pin and a slanted pull-tab track.

Madsen discloses an interlocking seal with a slider having a pull-tab with a pin in a slanted pull-tab track (31).

It would have been obvious to a person having ordinary skill in the art to add a pull-tab to Sander's slider to improve the ease of moving the slider back and forth to open and close the seal.

Regarding claim 36, Sander and Madsen are applied as set forth above. Sander also discloses a tilted upper interior surface on the body. The upper interior surface is tilted from side to side in figures 2-5 and it is tilted from front to back as seen in the cross sections starting from figure 3 to figure 5.

Regarding claim 37, Sander discloses a seal on a container (col. 1, lines 25-26), which can be used as a shipping package.

***Double Patenting***

10. Claims 25-35 and 38 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8,12 and 14 of U.S. Patent No. 6721999. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in the application encompass the scope of the claims in the patent.

11. Claims 36 and 37 have been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 14 of U.S. Patent No. 6721999, Meager in view of Sander, 2810944.

Claim 1 of Meager fails to claim "a body having a laterally tilted upper interior surface."

Sander discloses a tilted upper interior surface on the body. The upper interior surface is tilted from side to side in figures 2-5 and it is tilted from front to back as seen in the cross sections starting from figure 3 to figure 5.

It would have been obvious to one having ordinary skill in the art to modify Meager's body to have a tilt. This tilt facilitates the bringing together of the upper and lower seal members.

12. Claim 39 has been rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 24 of U.S. Patent No. 6721999, Meager in view of Sander, 2810944.

Meager's claim 24 fails to claim the combination of the seal with a container.

Art Unit: 3677

Sander discloses a seal on a container (col. 1, lines 25-26) for preventing the contents of the container from bursting the seal. This container can be used as a shipping package.

It would have been obvious to a person having ordinary skill in the art to use Meager's seal on a shipping container to more securely maintain the contents within the container and to prevent a breach of the seal.

***Election/Restrictions***

13. Claims 40-45 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/11/05.

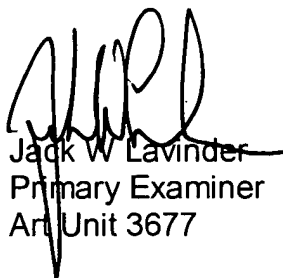
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 571-272-7119. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3677

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack W. Lavinder  
Primary Examiner  
Art Unit 3677

11/21/05